

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 36-009-14-1-5-20344-15
Petitioner: Edwin D. Ferris
Respondent: Jackson County Assessor
Parcel: 36-66-18-104-114.000-009
Assessment Year: 2014

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On January 2, 2015, the Petitioner, Edwin D. Ferris, filed written notice with the Jackson County Assessor challenging his property’s 2014 assessment. The Jackson County Property Tax Assessment Board of Appeals (“PTABOA”) failed to hold a hearing within 180 days. *See* Ind. Code § 6-1.1-15-1(k) (requiring a county PTABOA to hold a hearing within 180 days of a taxpayer filing written notice of review). On July 24, 2015, the Petitioner opted to file a Form 131 petition for review with the Board rather than wait for the PTABOA to act. *See* I.C. § 6-1.1-15-1(k) (allowing a taxpayer to appeal to the Board once the maximum time for a PTABOA to hold a hearing has elapsed). The Petitioner elected the Board’s small claims procedures.
2. Several months later, on January 11, 2016, the PTABOA issued a Form 115 determination valuing the property at \$49,000. The PTABOA, however, lacked authority to unilaterally change the assessment while the Petitioner’s appeal was pending before the Board.
3. On June 23, 2016, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing. Neither he nor the Board inspected the property.
4. The Petitioner represented himself. The Respondent, Jackson County Assessor Katie Kaufman, represented herself. Both were sworn as witnesses and testified.
5. The subject property is a two-story house located at 621 N. Chestnut Street in Seymour.
6. The Assessor determined the following values:
Land: \$14,200 Improvements: \$45,700 Total: \$59,900

11. The Petitioner objected to all the Respondent's exhibits, and the ALJ took those objections under advisement. First, the Petitioner objected to Respondent's Exhibit A—the subject property's PRC—on grounds that it has no relation to the property's value. Even if that is true, the PRC is the record of the assessment at issue in this appeal. It is therefore relevant, and we overrule the objection.
12. Second, the Petitioner objected to Respondent's Exhibit B—an appraisal of the subject property by Raymie Younkin and Richard Borges—on the grounds the appraisers valued the property under a standard other than market value-in-use. For support, the Petitioner pointed to page 4 of the appraisal where Younkin and Borges indicated that they based their opinion on a different valuation standard than market value. The Petitioner, however, ignores the part of the report where the appraisers laid out the valuation standard for their assignment, which they took directly from the 2011 Real Property Assessment Manual's definition of true tax value.
13. Finally, the Petitioner objected to Respondent's Exhibit C—the Form 115 determination the PTABOA issued after the Petitioner had already appealed to the Board. As explained above, that determination is a nullity. Nonetheless, it helps explain the procedural history of this appeal, and we admit it for that limited purpose.

Summary of Petitioner's Contentions

14. The assessment is too high. JP Morgan Chase Bank bought the property at sheriff's sale and then listed it for sale with Zillow real estate service at \$45,000. A proposed sale at that price fell through. On January 5, 2013 the bank put the property back on the market with an asking price of \$38,900, which it later reduced to \$28,000. The Petitioner bought the property for \$28,000 on July 8, 2013. Despite the Respondent's argument to the contrary, a bank sale is no different than a sale from an individual; banks are not in the habit of giving away money. About 25% to 50% of properties for sale are bank owned. Removing those sales from consideration gives a warped idea of what properties actually sell for. *See Ferris testimony and argument, Pet'r Ex. 3-7.*
15. In fact, the Petitioner believes the property should be assessed for even less. He had to make approximately \$4,000 to \$5,000 of repairs to the house following the assessment date. After making those repairs, he listed the property for sale at \$25,000. As of the hearing, it had been listed at that price for 91 days without selling. If the property could not sell at that price after the repairs, it must have been worth only about \$20,000 in March 2014, when the repairs had not yet been made. *Ferris testimony and argument; Pet'r Ex.1.*
16. As shown by an advertisement from 2014 or 2015, a vacant lot three blocks away from the subject property had a pending sale for \$9,900. That is less than the land portion of the subject property's assessment. Similarly, a nearby property with a habitable house was listed for sale at \$18,000. The subject property, which has an uninhabitable house,

should not be assessed for much more than that amount. *Ferris testimony and argument, Pet'r Ex. 8.*

17. Finally, Indiana assesses properties based on market value-in-use. Because the house had not been used for 10 years, it should have been assessed at zero. *Ferris testimony and argument.*

Summary of Respondent's Contentions

18. The Assessor hired Younkin, an Indiana Appraiser Trainee, and Borges, an Indiana Certified Appraiser and MAI, to appraised the property. They certified that that they performed the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). They made an extraordinary assumption that the property was in essentially the same physical condition on the date they inspected it (June 10, 2016) as it was on March 1, 2014, except for the following work that the Petitioner indicated had been completed during the interim: "plumbing to a full bath on level two, installation of the first level half bath, a new water heater, a new electrical entrance and service panel, a new HVAC system, and a few patches. *Resp't Ex. B.*
19. Younkin and Borges applied the sales-comparison approach and estimated the property's market value-in-use at \$35,000 as of March 1, 2014. They used sales of three properties they believed were comparable to the subject property. Those properties sold between July 2, 2012, and July 12, 2013, for prices ranging from \$35,299 to \$40,000. They were all "turn-of-the-century era single family dwellings" in the same neighborhood as the subject property. While all the houses had "a degree of distress related to physical condition," the house on the West 6th Street property was the most similar to the subject house. *Resp't Ex. B.*
20. The appraisers adjusted each sale price to account for relevant ways in which the property differed from the subject property. The gross adjustments ranged from 34% to 84.4% of the sale prices, with the West 6th Street property requiring the least adjustment. The adjusted prices ranged from \$32,101 to \$37,299. The West 6th Street property was the highest, but the appraisers also gave the other two properties moderate consideration and settled on a value of \$35,000 for the subject property. *Resp't Ex. B.*
21. The Respondent's office has been instructed not to consider bank sales in its ratio analyses because they do not show a property's value. The sale from JP Morgan Chase Bank to the Petitioner should be disregarded for that reason. *Kaufman testimony.*

Burden of Proof

22. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and

assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15- 17.2(a), (b) and (d). The Petitioner conceded he had the burden of proof.

Analysis

23. In Indiana, real property is assessed based on its “true tax value,” which means, “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” I.C. § 6-1.1-31-6(c). 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs or sale information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also, I.C. § 6-1.1-15-18*. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2014 assessments, the valuation date was March 1, 2014.
24. The Petitioner made several different arguments about what he believed the assessment should be. Some are patently untenable, such as his claim that the property should be assessed at zero because it was not actively used as a residence for ten years. Others, simply, were not supported by probative evidence. For example, the Petitioner offered advertisements for two other properties he claimed were comparable to the subject property. But he did little to show how those properties compared to the subject property and nothing to explain how any relevant differences affected their relative values. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (holding that taxpayers failed to make a prima facie case where they did not explain how the characteristics of their purportedly comparable properties compared their property or how any relevant differences affected value).
25. The Petitioner did offer one probative fact—he bought the property for \$28,000 less than nine months before the relevant January 1, 2014 valuation date.
26. The Respondent sought to impeach that sale price by claiming that “bank sales”—presumably meaning transactions where banks get properties through foreclosure and then sell them—are not valid indicators of true tax value. Although the Respondent did little to explain her claim, there are various reasons a particular bank sale might not be a

good indication of a property's market value. For example, banks may not be typically motivated sellers because they aren't in the business of holding or selling property. Similarly, the property may not have been exposed to the market in a commercially reasonable manner or for a reasonable time. *See 125 Monitor Street, LLC v. Jersey City*, 21 N.J. Tax 232, 240-41 (N.J. Tax Ct. 2004) (discussing why "[t]ypically in bank sales, the circumstances surrounding the sale may indicate a depressed price of the property").

27. But the Respondent did not offer any evidence to show those concerns affected the subject property's sale price. By contrast, the Petitioner addressed at least one of those concerns by showing that JP Morgan Chase marketed the property for approximately nine months and twice reduced its asking price before selling the property to the Petitioner. He also claimed that bank sales made up between 25% and 50% of the market. *See Lake County Ass'r v. U.S. Steel Corp.*, 901 N.E.2d 85, 91-92 (Ind. Tax. Ct. 2009) (upholding the Board's reliance on a sales-comparison approach that included sales out of bankruptcy where the taxpayer showed they were the market norm). He offered no support for that largely conclusory assertion, however, and we give it little weight. Nonetheless, the Petitioner did enough to convince us that the sale is at least generally probative of the property's true tax value.
28. The Respondent, however, did not merely try to impeach the Petitioner's evidence; she also offered her own evidence of the property's value—a USPAP-compliant appraisal in which Younkin and Borges applied a generally accepted appraisal methodology (the sales-comparison approach) to estimate its true tax value at \$35,000 as of the appropriate valuation date. The Petitioner did not impeach the appraisers' credibility or the reliability of their valuation opinion.
29. We must therefore weigh the evidence. While both the sale price and appraisal are probative, we are more persuaded by the appraisal. The Petitioner's evidence about the property's listing history mitigates our concerns about using a bank sale. But it does not completely dispel the inference that the bank was an atypically motivated seller. Under those circumstances, we are more persuaded by the appraisal. That is true even though the Petitioner could not sell the property for its 2016 list price of \$25,000 after having spent money to improve the house. That listing was from more than two years after the relevant valuation date, and the Petitioner did not explain how it related to that valuation date. We therefore give it little or no weight. Thus, based on the appraisal from Younkin and Borges, we find the subject property's true tax value was \$35,000.

FINAL DETERMINATION

The subject property's 2014 assessment must be changed to \$35,000.

Issued: September 19, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

-APPEAL RIGHTS-

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.